

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MALINKA MOYE,
Plaintiff,

vs.

JACK CHEW,
Defendant.

No. C 08-2055 MEJ

**ORDER DISMISSING CASE WITHOUT
PREJUDICE**

**ORDER DENYING MOTION TO
PROCEED IN FORMA PAUPERIS**

On April 21, 2008, Plaintiff Malinka Moye filed a complaint naming Jack Chew as a defendant. On the same day, Plaintiff also filed an Application to Proceed In Forma Pauperis ("IFP"). Plaintiff has consented to the jurisdiction of a United States magistrate pursuant to 28 U.S.C. § 636..

I. IFP Application

Pursuant to 28 U.S.C. § 1915(a)(1), the Court may permit an individual to file an action in federal court without prepayment of fees when the plaintiff has demonstrated his or her poverty. Here, Plaintiff has submitted an application which states that he has a monthly net income of \$750.000 and expenses only for food. His total expenses amount to \$300.00 per month. Accordingly, this Court must conclude that Plaintiff has not demonstrated his poverty, and therefore denies Plaintiff's Motion to proceed in forma pauperis.

II. Merits of Plaintiff's Complaint

Pursuant to 28 U.S.C. § 1915(e), where a plaintiff seeks to proceed in forma pauperis, the Court must dismiss the complaint if it determines that the complaint is frivolous or malicious, or that the plaintiff has failed to state a claim upon which relief can be granted. 28 U.S.C. § 1915(e)(2)(B). The Court may deny leave to proceed in forma pauperis if it determines at the outset "if it appears from the face of the proposed complaint that the action is frivolous or without merit." *Tripati v. First National Bank & Trust*, 821 F.2d 1368, 1370 (9th Cir. 1987). In making this determination, the Court assesses the factual and legal basis of the asserted wrong, "however inartfully pleaded," to determine whether a basis for federal jurisdiction exists. *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir. 1984). However, "[a] court may dismiss as frivolous complaints reciting bare legal conclusions with no suggestion of supporting facts, or postulating events and circumstances of a wholly fanciful kind." *Id.* (citing *Taylor v. Gibson*, 529 F.2d 709, 717 (5th Cir. 1976)).

Here, Plaintiff's Complaint seems to allege violations of 18 U.S.C. § 1961-1968. (RICO), but Plaintiff states no facts in support of his claim. Plaintiff's complaint is devoid of facts or allegations establishing causation and harm or any information about the basis for the claim and the Court's jurisdiction. *See* Fed. R. Civ. P. 8(a)(2). Accordingly, the undersigned hereby dismisses Plaintiff's complaint.

III. Leave to Amend

A court should only dismiss a complaint without leave to amend when "the court can rule out any possibility, however unlikely it might be, that an amended complaint would succeed in stating a claim." *Lopez v. Smith*, 203 F.3d 1122, 1128 (9th Cir. 2000) (internal quotation omitted). In this case, the Court dismisses Plaintiff's complaint without prejudice. Plaintiff shall be given a chance to amend his complaint. The Court also instructs Plaintiff as follows:

Any amended complaint should contain a simple statement of why Plaintiff believes the federal court has the power (i.e., the jurisdiction) to decide this case, a clear and concise explanation of what Plaintiff believes Defendant did that was unlawful and an explanation of what laws Plaintiff believes were violated by Defendant's conduct. Plaintiff can find more information on what needs to be in a complaint in the Pro Se Handbook, which is available on the district court's website, <http://www.cand.uscourts.gov>. If Plaintiff fails to file an amended complaint that contains a short and plain statement of the claim and the

basis for federal court jurisdiction, this Court will dismiss Plaintiff's Complaint with prejudice.

IV. Conclusion

Based on the analysis above, the Court ORDERS the following::

1. Plaintiff's Motion to Proceed in Forma Pauperis is DENIED.
2. Plaintiff's Complaint is DISMISSED with leave to amend.

IT IS SO ORDERED.

Dated: October 7, 2008



MARIA-ELLEN JAMES
United States Magistrate Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MALINKA MOYE,

Plaintiff,

v.

JACK CHEW,

Defendant.

Case Number: CV08-2055 MEJ

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 7, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

1 Malinka Moye
2 40. 42 Parson Street
3 San Francisco, CA 94118

4 Dated: October 7, 2008

Richard W. Wieking, Clerk
By: Brenda Tolbert, Deputy Clerk